

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: CORN BELT POWER COOPERATIVE	DOCKET NO. E-21519
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**ORDER CANCELING HEARING, ACCEPTING COMPROMISE,
AND ASSESSING CIVIL PENALTY**

(Issued August 28, 2003)

On June 30, 2003, the Utilities Board (Board) ordered Corn Belt Power Cooperative (Corn Belt) to appear on September 3, 2003, to show cause why civil penalties should not be imposed for alleged violations of Iowa Code chapter 478. Corn Belt filed a motion for compromise on August 21, 2003. In the motion, Corn Belt acknowledged that it is subject to the imposition of civil penalties as a result of its actions in converting 0.5 miles of single circuit 72.5 kV (69 kV nominal) transmission line to double circuit line without first filing a petition for amendment to electric franchise or obtaining a franchise. Corn Belt asked that the show cause hearing scheduled for September 3, 2003, be cancelled and that the Board determine and assess, without hearing, an amount of civil penalty it deems appropriate.

An affidavit by Corn Belt's Senior Vice-President, Engineering and System Operations, was attached to the motion for compromise. The affidavit acknowledged the violation and outlined actions Corn Belt would take to prevent a reoccurrence. No objections to the motion for compromise were filed.

The events leading to the June 30, 2003, show cause order are detailed in the affidavit filed by Corn Belt, but can be summarized as follows. The 0.5 miles of double circuit in dispute was part of an overall project that included a new switching station and reconductoring of 10.5 miles of transmission line. The 0.5-mile segment was completed in February 2003. The reconductoring of the remaining portion of the line did not require a franchise or amendment to franchise. Corn Belt said it overlooked the fact that a petition to amend existing franchise was necessary prior to construction of the 0.5 miles of double circuit and that it became aware of the omission when new engineering specifications for the 10.5 miles of recondutored line were being prepared pursuant to 199 IAC 11.5(10) in May 2003. Corn Belt said it considered removing the 0.5 miles of line prior to seeking a franchise but that this alternative was not practical because it would adversely impact service reliability.

Corn Belt immediately notified the Board's staff upon discovery of the omission. Subsequent to meeting with the Board's staff on May 28, 2003, Corn Belt filed its petition for amendment to franchise.

Iowa Code chapter 478 governs the franchise of electric transmission lines.

Iowa Code § 478.1 provides, in part:

A person shall not construct, erect, maintain, or operate a transmission line, wire, or cable that is capable of operating at an electric voltage of sixty-nine kilovolts or more along, over, or across and public highway or grounds outside of cities for the transmission, distribution, or sale of electric current, without first procuring from the utilities board within the utilities division of the department of commerce a franchise granting authority as provided for in this chapter.

There is no dispute that the 0.5 miles of line in question is subject to the Board's franchise authority.

Corn Belt's motion to compromise was accompanied by an affidavit by Kenneth H. Kuyper, senior vice-president of engineering and systems operations. In both the motion and affidavit, Corn Belt accepted responsibility for the error. The Board commends Corn Belt for immediately notifying the Board's staff when the violation became known. In Mr. Kuyper's affidavit, he indicated that Corn Belt has increased the size of its engineering staff and, among other things, has engaged its outside counsel to conduct periodic training and review sessions with all personnel involved in the franchising process. The first such session is scheduled for September 5, 2003.

Iowa Code § 478.29 provides that "[a] person who violates a provision of this chapter is subject to a civil penalty, which may be levied by the board, of not more than one hundred dollars per violation or one thousand dollars per day for a continuing violation, whichever is greater." The provisions of Iowa Code chapter 478 are designed to safeguard the interests of ratepayers, adjoining landowners, and the public generally by providing that, before granting a franchise, the Board must determine, among other things, that the proposed line is necessary to serve a public use and represents a reasonable relationship to an overall plan of transmitting electricity in the public interest. Iowa Code § 478.4. Any person whose rights may be affected may object to the proposed franchise. Iowa Code § 478.5.

Section 479.31 also provides that the Board may compromise any civil penalty. The statute states:

In determining the amount of the penalty, or the amount agreed upon in compromise, the appropriateness of the penalty to the size of the business of the person charged, the gravity of the violation, and the good faith of the person charged in attempting to achieve compliance, after notification of a violation, shall be considered.

In this case, the violation occurred when the 0.5-mile line segment was double-circuited in February 2003. When Corn Belt became aware of the violation in May 2003, the violation was immediately reported.

Because Corn Belt has admitted and accepted responsibility for the violation, the Board will accept the motion for compromise and cancel the show cause hearing scheduled for September 3, 2003. The Board will, pursuant to the motion for compromise, proceed to impose civil penalties without hearing.

While the Board wants to encourage utilities to report any violations as soon as the utilities become aware of them so that corrective action can be taken immediately, the Board is concerned that this is the second violation of the electric franchise statutes by Corn Belt in less than two years. See, Corn Belt Power Cooperative, "Order Canceling Hearing, Accepting Compromise, and Assessing Civil Penalty," Docket No. E-21570 (2/1/02). In that proceeding, Corn Belt also gave assurances that procedures were in place to prevent the recurrence of a violation.

The Board believes Corn Belt's action here was inadvertent and not caused, as was its previous violation, by a flawed interpretation of Iowa Code chapter 478 that

the Board determined was without merit. This previous violation was not brought to the Board's attention by Corn Belt but discovered by the Board's staff during an inspection.

Although the Board does not view the present violation, in isolation, to be as serious as Corn Belt's previous violation, the Board is concerned that Corn Belt did not place sufficient processes in place after the first violation to guard against future violations. Corn Belt's assurances in the affidavit filed in this proceeding, particularly the portion regarding increased staffing and training sessions conducted by outside counsel, provide reason to believe that a future violation is not likely to occur. Therefore, based on all the facts and circumstances of the case, the Board will impose a civil penalty of \$300.

By bringing this action and assessing this fine, the Board puts all companies on notice that franchise requirements must be followed. However, the Board recognizes that there are some violations that may have occurred many years ago that have only recently been detected. The Board encourages companies to report any such violations immediately and to cooperate with the Board's staff in remedying such violations. Any penalties that may be imposed would likely be mitigated if the violations are self-reported and not discovered by the Board's staff. The companies should also examine their processes, like Corn Belt has, to see if additional personnel or training are needed to ensure future compliance with the Iowa statutes and Board rules.

IT IS THEREFORE ORDERED:

1. The motion for compromise filed by Corn Belt Power Cooperative on August 21, 2003, is accepted and, therefore, the show cause hearing scheduled for September 3, 2003, is cancelled.
2. Pursuant to Iowa Code § 478.1, Corn Belt Power Cooperative is assessed a civil penalty in the amount of \$300 for violation of Iowa Code chapter 478.
3. Copies of this order shall be served on all investor-owned electric utilities, electric cooperatives, municipal utilities, the Iowa Association of Electric Cooperatives, the Iowa Association of Municipal Utilities, and the Iowa Utility Association.

UTILITIES BOARD

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 28th day of August, 2003.